

Remarks

This responds to the Office action dated March 15, 2007. Claims 4–7 and 9–15 are pending in the application and are rejected. Claims 1–3 and 8 are canceled. Applicants reserve the right to file continuing applications directed to the subject matter of the canceled claims.

Applicants thank Examiner Shibuya for discussing this case with applicants' representative, Travis Young, on August 15, 2007. Reconsideration of the claims is respectfully requested.

Priority

The Office action alleges that claim 11 is not entitled to claim priority from applicants' prior provisional application number 60/047,804, filed May 27, 1997. Applicants respectfully disagree, but note that this point is moot in the present application.

Rejections under 35 U.S.C. § 112

Claims 4–7 and 9–15 are rejected under 35 U.S.C. § 112 as allegedly containing new matter. Applicants traverse this rejection and request that it be withdrawn.

The Office action specifically alleges that the application specification fails to provide support for "interparticle spacing" as recited in independent claim 4, from which claims 5–7 and 9–15 depend. Applicants disagree. Nonetheless, to expedite prosecution, claims 4, 14 and 15, which previously included this feature have been amended to instead recite the language used on page 9, lines 21–24 of the application as originally filed. Specifically, claims 4, 14 and 15 now state that the "distance between the edges of cluster cores." Applicants respectfully request that the rejection of claims 4–7 and 9–15 under 35 U.S.C. § 112 be withdrawn.

Double Patenting Rejections

Claims 4–7 and 9–15 also are rejected under the judicially created doctrine of obviousness-type double patenting over applicants' U.S. Patent No. 6,872,971 (the '971 patent).

The present application and the '971 patent are commonly owned by the State Oregon. Accordingly, applicants file herewith a terminal disclaimer under 37 C.F.R. § 1.321 executed by the State of Oregon . Applicants therefore respectfully request that the rejection of claims 4–7 and 9–15 for obviousness-type double patenting be withdrawn.

Conclusion

The foregoing amendments place the application in condition for allowance without presenting new issues. Accordingly, applicants respectfully request that claims 4–7 and 9–15 be allowed in the present application. The Examiner is invited to telephone the undersigned if any issues remain before passing this case to allowance.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By

Travis Young, Ph.D.
Registration No. 53,819

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

The present application and the '971 patent are commonly owned by the State Oregon. Accordingly, applicants file herewith a terminal disclaimer under 37 C.F.R. § 1.321 executed by the State of Oregon. Applicants therefore respectfully request that the rejection of claims 4–7 and 9–15 for obviousness-type double patenting be withdrawn.


Conclusion

The foregoing amendments place the application in condition for allowance without presenting new issues. Accordingly, applicants respectfully request that claims 4–7 and 9–15 be allowed in the present application. The Examiner is invited to telephone the undersigned if any issues remain before passing this case to allowance.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By



Travis Young, Ph.D.
Registration No. 53,819

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301